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Supreme Court of the United States

October Term, A. D. 1925

FIRST NATIONAL BANK OF BALTIMORE
PETITIONER,

vs. No. 213

WM. H. STAAKE, TRUSTEE, RESPONDENT.

HENRY E. McHARG, RECEIVER, ET
ALS., PETITIONERS

vs. No. 214

WILLIAM H. STAAKE, RESPONDENT.

Petition for Rehearing

S. HAMILTON GRAVES,
Counsel for Petitioners.

PETITION FOR REHEARING.

October Term, 1905.

IN THE SUPREME COURT OF THE UNITED STATES.

FIRST NATIONAL BANK OF BALTIMORE, PETITIONER,

vs. **No. 213.**

WM. H. STAAKE, TRUSTEE, RESPONDENT.

BY MENRY K. McHARG, RECEIVER, ET. ALS. PETITIONER,

vs. **No. 214.**

WM. H. STAAKE, TRUSTEE, RESPONDENT.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The said First National Bank of Baltimore, and Henry K. McHarg, Receiver et. als., Petitioners, come now and respectfully petition this Honorable Court for a rehearing of said causes, for the following reasons, to wit:

The opinion of the court in these causes establishes the following propositions of law:

(1) That under Sec. 67-f. of the Bankruptcy Act of

1898, if a creditor through legal proceedings to which his insolvent debtor is a party acquires a lien under the state law upon the real estate of a third party, but which can be treaetd by **the attaching creditor only** as the property of the insolvent, and within four months of the acquisition of the lien, a petition in bankruptcy is filed against the insolvent debtor, the filing of the petition annuls the lien and the property affected thereby is discharged therefrom.

(2) That the Bankrupt Court may by virtue of said Section (67-f.) order that the right acquired by such lien shall be preserved for the benefit of the bankrupt's estate; and thereupon so much of the value of the attached property as is represented by the lien passes to the trustee of the bankrupt for the benefit of the general creditors.

(3) That if a creditor of an insolvent debtor acquire a lien by attachment within four months of the filing of a petition in bankruptcy against his debtor, upon property in which the bankrupt has no semblance of interest or estate, but which under the law of the state in which it is located, because of a policy of its own, is treated **as to the attaching creditor only,** and to the extent of the lien only, as property of the bankrupt, that then by virtue of said Sec. 67-f. such lien is to be reckoned as a part of the bankrupt's estate and passes to the trustee of such estate as a part thereof.

By the construction given to Sec. 67-f. it exceeds the power delegated by the grant.

By the 4th clause of § 8 of Art. 1 of the Constitution power is vested in Congress,—"To establish * * * * * uniform laws on the **subject of bankruptcies** throughout the United States" under the construction given 67-f. the same is unconstitutional and void for the following reasons, because:

(1) Laws on the "subject of bankruptcies" within

the meaning of the Constitution are those laws, and those only, which deal with the **person or estate, or both, of a bankrupt:**

(a) The estate or property of a bankrupt is such, and such only, as is his estate or property under the law of the state. It is not within the province of Congress under the power granted to change the state laws of property, therefore it cannot **reckon as property of a bankrupt** that which is not reckoned as his property quoad all of his creditors under the state laws.

(b) Under the power granted, Congress cannot by legislative fiat annul a lien obtained under a state law, save and except such lien be upon property which under the state law is the property, or is treated as the property, of the bankrupt and such as **all of his creditors** can subject.

(c) Under the power granted, Congress cannot create an asset for the general creditors by appropriating a lien of an individual creditor, which is upon property in which the bankrupt had no **beneficial interest** and which the **general creditors** could not subject under the state laws. It is not within the power granted, to take the property of one and give it to another.

And your petitioners pray, therefore, that an order may be made for a rehearing of the arguments in these causes, on a day to be appointed by this Court; and that they be permitted to file briefs upon the propositions above stated and upon such other points as the Court may direct.

First National Bank of Baltimore.

Henry K. McHarg, Receiver, et. als.

By Counsel, S. HAMILTON GRAVES, P. P.

Wm. G. Robertson
E. W. Robertson } of Counsel.
Holmes Conrad

I, S. Hamilton Graves, a practicing attorney in the Supreme Court of the United States, do hereby certify that in my opinion a rehearing should be granted as asked for in the foregoing petition and upon the grounds therein stated, and that decrees should be entered giving to the petitioners the benefit of their attachment liens.

Given under my hand this 18th day of May, A. D. 1906.

S. HAMILTON GRAVES.

BRIEF FOR PETITIONER

ON

APPLICATION FOR REHEARING.

Limited time prevents the doing of more than stating in the briefest manner our views on the questions presented by the foregoing petition.

Congress, in passing laws on the subject of bankruptcy, is restricted by the terms of the grant.

The first question presented therefore, is, what are "Laws on the subject of bankruptcies"? The term "Subject of bankruptcies" has not been directly defined by this court, but the limitations upon Congress have been, by the approval in the case of Hanover National Bank vs. Moyses (186 U. S., 185; 46 Law Ed., 1118) of the opinion of Mr. Justice Catron in the case in Re. Klein, in which when discussing the constitutional provision for a National Bankruptcy Act said:

> "In considering the question before me, I have not pretended to give a definition (but puposely avoided any attempt to define) the mere word 'bankruptcy'. It is employed in the Constitution in the plural, and as part of an expression, 'the subject of bankruptcies.' The ideas attached to the word in this connection are numerous and complicated; they form a subject of extensive and complicated legislation; of this subject, Congress has general jurisdiction; and the true inquiry is,—**To what limits is this jurisdiction restricted? I hold,** it extends to all cases where the law causes to be distributed **the property of the debtor** among his creditors; this is its least limit. Its greatest is the discharge of a debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject,—distribution and discharge—are in the competency and discretion of Congress."

Mr. Justice Story when discussing the subject of Bankruptcy and insolvency, (Story on the Constitution Vol. 2—§ 1106. 5th ed.) said:

> "That the general objects of all bankrupt and insolvent laws is, on the one hand to secure to creditors an appropriation of the property of their debtors pro tanto to the discharge of their debts whenever the latter are unable to discharge the whole amount: and on the other hand to relieve etc."

Mr. Justice Field, in United States vs. Fox. (95 U. S. 670 24 L. ed. 539) said.

> "There is no doubt of the competency of Congress to provide, by suitable penalties, for the enforcement of all legislation necessary or proper to the execution of powers with which it is intrusted. And as it is authorized 'To establish uniform laws on the subject of bankruptcies throughout the United States.' It may embrace within its legislation whatever may be deemed important to a complete and effective bankrupt system. The object of such a system is to secure a ratable distribution of the bankrupt's estate among his creditors, when he is unable to discharge his obligations in full, and at the same time to relieve the honest debtor from legal proceedings for his debts, upon a surrender of his property."

What are bankrupt laws within the meaning of the Constitution has been much discussed, but we have been unable to find in either text book or report, that a law on the subject of bankruptcies dealt with property other than that of the bankrupt. And we submit that in so far as it deals with property, a law on the subject of bankruptcies in the sense of the Constitution, is a law which provides for the disposition of a bankrupt's estate, **and his estate only.**

II

The estate or property of a bankrupt is such, and such only, as is his estate or property under the law of the state. It is not within the province of Congress under the power granted to change the state laws of property, therefore it cannot reckon as property of a bankrupt that which is not reckoned as his property quoad all of his creditors under the state laws.

The soverignty over property, always claimed and often exercised by governments and rulers is a subject of historical research which my capacity would not allow me to attempt if thought pertinent here. Kings exercised the right to give and take away property at their will, and out of this grew the struggles of the Revolution, which transferred the soverignty from the Crown to the individual states, this in turn became vested in the people of the states. Then a Federal Constitution was framed and adopted for specified purposes, and the powers granted to the "United States" specifically enumerated. The tenth amendment to the Constitution provides that: "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

"The government of the United States can claim no powers which are not granted to it by the Constitution; and the powers actually granted must be such as are expressly given, or given by necessary implication." Per Marshall, Ch. J., in Martin vs. Hunter's Lessee, 1 Wheat. 304, 326.

The residuary powers of legislation are in the states and extend to all persons and things within their territory and limits.

Among these powers are those relating to internal affairs, the power to regulate transfers of property within state limits to declare the effect of titles to land and to regulate the tenure of property, its acquisition, rule of descent, and extent of testamentary dis-

position. The right to exercise such power is foreign to the purpose for which the Federal Government was created, and was not delegated to it. Mr. Justice Field in U. S. vs. Annie Fox, 94 U. S. 315, 24 L. ed. 192, in discussing this subject said:

> "The power of the state to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. McCormick vs. Sullivant, 10 Wheat., 202. The power of the state in this respect follows from her soverignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal Government. The title and modes of disposition of real property within the state, whether **inter vivos** or testamentary, are not matters placed under the control of Federal authority. Such control would be foreign to the purposes for which the Federal Government was created, and would seriously embarrass the landed interests of the state."

Authority to pass laws on the subject of bankruptcies, unquestionably does not expressly give authority to repeal or modify the property laws of a state. It is within the power of Congress to modify such laws to the extent, and no further, that such action may be necessary and proper to carry out or exercise the power expressly conferred. If as we contend, the power expressly conferred is limited to the administration of the estate of a bankrupt, then the power to modify

or annul the state laws of property is confined to those which effect that estate. If Congress is without authority to repeal or modify the state laws of property, it from necessity follows, that property which under the law of the state belongs to one party, cannot by virtue of an act of Congress be reckoned as the property of another.

III

Under the power granted, Congress cannot by legislative fiat annul a lien obtained under a state law, save and except such lien be upon property which under the state law is the property of, or is treated as the property of the bankrupt, and such as all of his creditors can subject.

That Congress has power to declare void liens which may have been procured by a creditor of the bankrupt upon the property which it has power to administer, is not here questioned, but under the power granted it cannot declare void a lien acquired by a creditor of a bankrupt, save and except such lien be upon the estate of the bankrupt. The jurisdiction is limited to the administration of that estate. Of what that estate consists can be determined only by the law of the state. To what extent a creditor of a bankrupt may effect or subject the property of a third party is no concern of Congress. Whatever may be the restrictions which may be imposed upon the creditor of a bankrupt, they cannot be extended further than his acts may effect the estate of the bankrupt. By no reasonable construction of the power granted can it be said that Congress has a right to declare, that upon the filing of a petition in bankruptcy against an insolvent, that eo instanti every lien which may have been acquired by a creditor through legal proceedings to which the insolvent was a party shall be void. The power to administer the property of one class does not give power to destroy the vested rights of others

who occupy no other relation than that of creditors, and who by the acquisition and enforcement of their liens do not interfere with the property which is being administered.

The power to annul liens upon specific property does not give the right to annul those upon all property. If Congress can annul liens which are upon the property of third parties, then it has the right to administer such property. No power is vested in Congress to impose a penalty upon the creditor of a bankrupt for the sole reason that he is such creditor. It is not within the power of Congress to legislate upon the rights which may exist as between the creditor of a bankrupt and third parties. Congress cannot by legislative fiat, annul a lien obtained under the said law, if such lien does not effect property which Congress is authorized to administer.

I submit that no such power over a creditor of a bankrupt was delegated to Congress, and therefore, it does not exist

IV

Under the power granted Congress cannot create an asset for the general creditors by appropriating a lien of an individual creditor, which is upon property in which the bankrupt had no **beneficial interest** and which the **general creditors** could not subject under the state laws. It is not within the power granted to take the property of one and give it to another.

All creditors have an interest in the property of their common debtor, but one creditor has neither equity or interest in the property of another creditor. The liens in the case at bar are the property of petitioners under the state law, and are upon property in which neither the bankrupt nor his general creditors had any vestage of interest or estate under the state law. The difference in appropriating a lien which is upon a bankrupt's property, in which all of his credi-

tors have an interest, and in appropriating one which is upon property in which neither he nor they have an interest is apparent. In the one case Congress is exercising its power to administer the estate of a bankrupt; in the other, it is by legislative fiat creating a property right. It is taking the property of one and giving it to another. No such power anywhere exists in this Republic.

"There is no rule or principle known to our system under which private property can be taken from one person and transferred to another, for the private use and benefit of such other person, whether by general law or by special enactment." Cooley's Constitutional Limitations 7th ed. P. 507.

Mr. Justice Patterson in Vanhorne vs. Dorrance (2 Dall. 304; 1 L. ed. 391) when discussing the validity of an act of the legislature of Pennsylvania which in effect seized the property of one and gave it to another, said:

> "The English history does not furnish an instance of the kind; the Parliament with all their boasted omnipotence, never committed such an outrage on private property; and if they had, it would have served only to display the dangerous nature of unlimited authority; it would have been an exercise of power and not of right. Such an act would be a monster in legislation, and shock all mankind. The legislature, therefore, had no authority to make an act divesting one citizen of his freehold, and vesting it in another, without a just compensation. It is inconsistent with the principles of reason, justice, and moral rectitude; it is incompatible with the comfort, peace, and happiness of mankind; it is contrary to the principles of social alliance in every free government; and lastly, it is contrary both to the letter and spirit of the Constitution."

The appropriateing of a lien for the benefit of the general creditors to the detriment of the owner of that lien, when the same is upon the property of a party other than the bankrupt, is the exercise by Congress of unauthorized power and not of right. The Constitution does not empower Congress to act without limitation over persons and property. Congress is only invested with limited powers over persons and things, for the purpose of exercising the defined powers delegated to it. Sec. 67-f. as construed, is an encroachment upon a sacred and fundamental right, a right inherent and unalienable.

It is most respectfully but earnestly submitted, that a rehearing should be granted in these causes, that if the construction heretofore given said section be adhered to, that then and in that event, the same be by this Court decreed unconstitutional and void.

Respectfully submitted,

S. HAMILTON GRAVES,

Counsel for Petitioners.